IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 922 of 1996

For Approval and Signature:

HONOURABLE MR.JUSTICE JAYANT PATEL

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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KEYURBHAI KANTIBHAI PATEL - Petitioner(s)
Versus
STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :
MR PJ VYAS for Petitioner(s) : 1,
RULE SERVED for Respondent(s) : 1 - 2.

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CORAM : HONOURABLE MR.JUSTICE JAYANT PATEL

Date : 09/02/2007

ORAL JUDGMENT

1. The short facts of the case are that as per the petitioner, the quarry was taken over by him

from Parul Metal Quarry under the Agreement entered into on November 1984, with the fixtures and machineries and the petitioner was carrying on the business in the name and style of Ganesh Metal Quarry since 1984 and as per the petitioner, name of the firm was also entered into the revenue record of village Form No. 7 & 12 since 1984-1985 and the petitioner has approached to this Court by way of the present petition complaining that the order for eviction is passed under Bombay Land Revenue Code (hereinafter referred to as 'the Code') without giving any opportunity of hearing. This Court (Coram:A.N. Divecha, J.) on 01.02.1996 passed the following order:

> “Notice returnable on 14.02.1996. By way of ad interim relief, status quo with respect to the subject matter of the petition is ordered to be maintained by both the sides. Direct service is permitted.”

Thereafter, on 29.02.1996, this Court (Coram:A.N.Divecha,J.)had passed the following Order:

> “Rule. The ad interim relief is ordered to continue till this petition is heard and finally disposed of. It will be open to the respondents to move this Court for fixing an early date of hearing after they are served.”

2. I have heard Mr. Vyas for the petitioner and Mr. Soni, learned AGP for the State Authorities.

3. Mr. Soni, learned AGP has made available to the Court his office record, which shows that on 26.04.1996, the Revenue Department of the State Government has forwarded the papers to the Deputy Collector, Godhra and the copy of the said communication is in the file of the Government Pleader. Thereafter, it appears that on 15.05.1996, the Deputy Collector has communicated to the Revenue Department of the State Government that the file is forwarded to the office of the Government Pleader of the High Court and at the bottom of the said letter, it has been mentioned that as per the orders of the State Government, appropriate action may be taken for vacating of the stay.

4. The proceedings before the Mamlatdar further shows that initially the hearing was fixed and the matter was kept on 11.08.1995 and on the said date, as nobody remained present on behalf of Ganesh Metal Quarry, through its proprietor Keyurbhai Kantibhai Patel, the petitioner herein, the matter was adjourned in the interest of justice on 30.10.1995. Again on the next date, nobody has remained present and therefore, the matter was forwarded to the Prant Officer for immediate action through Registered A.D. Post. Thereafter, it appears that the impugned notice came to be issued for vacating the petitioner from the land in question.

5. Under these circumstances, the contention as sought to be canvassed on behalf of the petitioner that no hearing is given cannot be accepted for the simple reason that if the notice has been issued and the party does not remain present and thereafter, if the authority has passed the order of eviction, the same cannot be termed as in breach of the principles of natural justice and therefore, the said contention fails.

6. Apart from the above, as contended by the learned AGP, the permission was not given for transfer of the quarry. Even otherwise also, if a quarry license is given to Parul Metal Quarry as stated by the petitioner himself, the same cannot be transferred to Ganesh Metal Quarry, the petitioner herein without obtaining permission of the competent authority. Merely because in the revenue record of village form No. 7 & 12, the name is entered, would not be justifiable ground on the part of the petitioner to continue with the possession of the quarry. Therefore, if the petitioner is in unauthorised occupation of the quarry and if the petitioner has unauthorisedly excavated any material, the petitioner was required to be evicted from the land in question. Under these circumstances, if the order is passed for evicting the petitioner by the impugned notice, such an action on the part of the authority cannot be said as

unreasonable or arbitrary. On the contrary, the action can be said as in furtherance to the maintenance of public property.

7. In view of the aforesaid facts and circumstances, the relief prayed by the petitioner for quashing and setting aside of the impugned Notice(Annexure-A) cannot be granted.

8. However, before parting with, it deserves to be recorded on the aspects of callous approach by the concerned department of the State Government and the same is that after 29.02.1996, no steps whatsoever have been taken by the concerned department of the State Government for moving this Court for early final hearing as observed nor any steps are taken for vacating of the ad interim order which came to be passed as per the order dated 01.02.1996 read with the order dated 29.02.1996.

9. The file of the learned AGP shows that while receiving the entire copy of the communication dated 15.05.1996, the intimation was given by the Deputy Collector to the office of the Government Pleader for taking steps for vacating of the interim order. Copy of the said communication received from the department is taken on record. No steps whatsoever is taken by the person concerned and the resultant effect is that, after 1996, in the year 2007, when the matter has reached for final hearing, the order

of status quo, consequently may be resulting into continuing the unauthorised possession and in view of the aforesaid finding has operated for about 10 years. Such being the ex facie callous approach on the part of the person concerned, hence, the Law Secretary of the State Government is directed to inquire into the matter and shall take appropriate action in accordance with law against the concerned erring officer, if ultimately found and shall also submit the report to this Court within a period of one month from the conclusion of the inquiry and the action if any to be taken in this regard. In his report, he shall also state as to what steps the Government is to take to ensure that such things are not repeated in future.

Office to supply a copy of the order to the learned Government Pleader for communication and necessary steps in this regard.

10. Disposed off accordingly. Subject to the aforesaid direction Rule discharged. No order as to costs.

(JAYANT PATEL, J.)

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